

1 AARON D. FORD
2 Attorney General
3 Michael J. Bongard (Bar. No. 7997)
4 Senior Deputy Attorney General
5 State of Nevada
6 Office of the Attorney General
7 1539 Avenue F, Suite 2
8 Ely, NV 89301
9 (775) 289-1632 (phone)
10 (775) 289-1653 (fax)
11 mbongard@ag.nv.gov

12 Attorneys for Respondents

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 OMAR AYALA,

16 Petitioner,

17 vs.

18 BRIAN E. WILLIAMS, SR., et al.,

19 Respondents.

20 Case No. 2:17-cv-02093-RFB-VCF

21 **UNOPPOSED MOTION FOR AN**
22 **EXTENSION OF TIME TO FILE THE**
23 **ANSWER TO THE FOURTH AMENDED**
24 **PETITION FOR WRIT OF HABEAS**
25 **CORPUS**
26 **(ECF NO. 46)**

27 **(First Request)**

28 Respondents, through legal counsel, Aaron D. Ford, Attorney General of The State of Nevada, and Michael J. Bongard, Senior Deputy Attorney General, hereby move this court for a sixty (60) day enlargement of time, up to and including January 6, 2023, in which to submit the answer to the fourth amended petition for writ of habeas corpus (ECF No. 46). The response is currently due November 7, 2022. Respondents base this motion on the declaration of Counsel.

29 This is Respondents' first request for an extension of time in which to file the answer and made
30 in good faith and not for purposes of delay.

31 DATED this 26th day of October, 2022.

32 AARON D. FORD
33 Attorney General

34 By: /s/ Michael J. Bongard
35 Michael J. Bongard (Bar No. 007997)
36 Senior Deputy Attorney General

DECLARATION OF MICHAEL J. BONGARD

1. I am a Deputy Attorney General employed by the Attorney General's Office of the State of Nevada in the Post-Conviction Division, and I make this declaration on behalf of Respondents' Unopposed Motion for Enlargement of Time to file the answer to the petition (First Request) in the above-captioned case. By this motion, I am requesting a sixty (60) day enlargement of time, up to and including, January 6, 2022, to file and serve the answer to the petition. The answer is currently due November 7, 2022.

2. Since the Court's August 9, 2022, order on the motion to dismiss in this matter, Counsel has filed the following pleadings in federal habeas matters: 1.) On September 1, 2022, an opposition to the motion to file a replacement opening brief in *Bejarano v. Reubart*, et al., Ninth Circuit case number 11-99000 (death penalty case); 2.) On September 6, 2022, the answer to the remaining claims in *Leal v. State*, USDC case number 2:21-cv-00595-JAD-VCF; 3.) On September 8, 2022, the answer to the remaining claims in *Moore v. Reubart*, et al., USDC case number 2:13-cv-00655-JCM-DJA (death penalty case); 4.) Also on September 8, 2022, pleadings addressing a pro se petitioner's filings in the closed case of *O'Keefe v. LeGrand*, et al., USDC case number 2:11-cv-02109-JCM-VCF; and 5.) On October 25, 2022, counsel filed the supplemental response to procedurally defaulted claims in *McNelton v. Reubart*, et al., USDC case number 2:00-cv-00284-RJC-DJA (death penalty case).

3. In addition to the answer in this case, Counsel is currently working on the following pleadings: 1.) the answer to the remaining claims in *Greene v. Reubart*, et al., USDC case number 2:07-cv-00304-CSD-DJA (death penalty case), currently due on November 21, 2022; and 2.) supplemental blind briefing in *Bejarano v. Reubart*, et al., Ninth Circuit case number 11-99000 (death penalty case), due on November 14, 2022. It is likely that Counsel may need a further enlargement of time in the *Greene* case.

4. Counsel has also filed the following pleadings in state courts: 1.) On August 22, 2022, Counsel filed the answering brief in *Ferm v. State of Nevada*, Nevada Supreme Court case number 84002; 2.) On September 19, 2022, motions to dismiss state habeas petitions in Seventh Judicial District Court (White Pine County) cases *Lora v. State*, case number HC-2208007, and *Lopez v. Reubart*, case number HC-2208008; and 3.) On October 19, 2022, a motion to dismiss the state habeas petition in *Proctor v.*

1 *Reubart*, Seventh Judicial District Court (White Pine County) case number HC-2209012. Counsel also
2 filed pretrial motions, oppositions, and replies in the two cases in paragraph 5, below.

3 5. Counsel has also appeared for state court hearings in the following matter: 1.) Status
4 hearings in *State v. Georgantas*, Eighth Judicial District Court case number C-16-311820-1 on August
5 17, 2022, and September 12, 2022; 2.) On August 22, 2022, the arraignment in *State v. Banasiak*, Seventh
6 Judicial District Court case number CR-2205056 (White Pine County); 3.) On August 24, 2022, a
7 preliminary hearing in *State v. Brown*, Ely Justice Court case number 22-CR-00026-7k; 4.) On August
8 29, 2022, a change of plea hearing in *State v. Rojas-Rubio*, Seventh Judicial District Court case number
9 CR-2206062 (White Pine County); 5.) On August 31, 2022, argument on the Mandamus petition in *Leal*
10 *v. Nevada Department of Public Safety*, et al., Eighth Judicial District Court case number A-21-840493-
11 W; 6.) On September 8, 2022, two preliminary hearing in the Ely Justice Court in *State v. Ogunbanwo*,
12 case number 22-CR-00069-7k, and *State v. Robins*, case number 21-CR-00158-7k; 7.) On September 26,
13 2022, the sentencing hearing in *State v. Emanuel*, Seventh Judicial District Court (White Pine County)
14 case number CR-2003028; 8.) On September 30, 2022, a hearing on pretrial motions in *State v.*
15 *Himmelman*, Fourth Judicial District Court case number CR-22-29; 9.) On October 3, 2022, a sentencing
16 hearing in *State v. Morgan*, Seventh Judicial District Court (White Pine County) case number CR-
17 2202012, a change of plea and sentencing also in White Pine County in *State v. Hagerman*, case number
18 2202013, and a telephonic case management hearing in *Savage v. State*, Eleventh Judicial District Court
19 (Pershing County) case number 27CV-WR1-2020-0219; 10.) On October 7, 2022, Counsel traveled to
20 Elko for a settlement mediation in *State v. Himmelman*, Fourth Judicial District Court case number CR-
21 22-29; and 11.) On October 20, 2022, a case management hearing in *Wilson v. Russell*, Eleventh Judicial
22 District Court (Mineral County) case number 21CV-WR1-2021-0052.

23 6. Counsel has also been preparing for two multiple week trials in state court: The first trial,
24 *State v. Range*, and *State v. Escalante*, Seventh Judicial District Court case numbers CR-1910104 and
25 CR-1910105 (White Pine County), a murder trial originally set for November 1 through November 18,
26 2022, has been continued to July of 2023. The second trial, *State v. Himmelman*, Fourth Judicial District
27 Court case number CR-22-29, also a murder trial, is set for a change of plea on October 31, 2022. If the
28 case does not plea, trial is set for November 29, 2022, through December 9, 2022.

7. Counsel took leave from August 5, 2022, through August 16, 2022, and on September 16, 2022. Counsel will also be taking annual leave from December 16, 2022, through January 3, 2023. Counsel also needs to take approximately four additional days of leave or face losing the leave time. Counsel also had medical appointments that took him out of the office for part of August 17, 2022,

8. On October 25, 2022, Counsel e-mailed opposing counsel, Shelly Richter from the Federal Public Defender Office, to determine whether she would oppose this request for enlargement of time. Ms. Richter replied via e-mail stating that she does not oppose this motion. Based upon the progress made on the answer in this case, Counsel does not anticipate additional time will be needed absent unforeseen circumstances.

For these reasons, Counsel respectfully asks this Court to grant the request for an extension of time of sixty (60) days to file the response to the petition.

DATED this 26th day of October, 2022.

By: /s/ Michael J. Bongard
Michael J. Bongard (Bar No. 007997)
Senior Deputy Attorney General

ORDER

IT IS SO ORDERED.

Dated this 26th day of October, 2022.


RICHARD E. BOULWARE, II
United States District Court

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system on the 26th day of October, 2022.

The following participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Shelly Richter
Assistant Federal Public Defender
411 E. Bonneville, Suite 250
Las Vegas, NV 89101

/s/ Amanda White